

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14655, as amended, of Donnelly Associates, Limited Partnership, pursuant to Section 3107.2 of the Zoning Regulations, for variances from the provisions of the rear yard requirements of Section 404.1, lot occupancy requirements of Section 403.2, the court requirements of Section 406.1, and the provisions of Sub-section 2001.3 for a proposed addition to an existing nonconforming structure in an R-5-D District at premises 2521-2523 K Street, N.W., (Square 15, Lots 802 and 803).

HEARING DATE: July 29, 1987

DECISION DATE: July 29, 1987 (Bench Decision)

FINDINGS OF FACT:

1. As a preliminary matter at the public hearing, the applicant requested clarification of the areas of relief which are the subject of this application. In view of the fact that the application had been filed and advertised for public hearing prior to receipt of the Zoning Administrator's memorandum, three areas of relief were included in the application whereas five were listed on the zoning memorandum. In addition to the three areas of relief applies for and advertised, the Zoning Memorandum identified the need for a variance from the off-street parking requirements of Sub-section 2101.1, and a variance from the provisions of Sub-section 2001.3 to allow an addition to a nonconforming structure which creates new non-conformity of structure. The applicant stated that the off-street parking variance was not applicable since the subject structures were designated historic landmarks, and noted the filing in the record of a memorandum from the Office of the Corporation Counsel so stating. The applicant further stated that a variance from Sub-section 2001.3 was duplicative of other areas of relief sought in the application. After preliminary discussion by the Board on this latter point, the applicant moved to amend the application to request a variance from Sub-section 2001.3.

After considering the matter, responses from parties, and the advise of staff, and no party having objected thereto, and it appearing to the Board that no party would be prejudiced by the requested amendment, the Board ruled to approve amendment of the application to include a variance from the provisions of Section 2001.3 to allow an addition

to a nonconforming structure which creates new non-conformity

of structure. The Board further ruled that the applicant is not seeking an exemption from the parking requirement for designated landmarks pursuant to Sub-section 2100.5 of the Zoning Regulations. The Board, therefore, will not address variance relief pursuant to 2100.5. The Board indicated, however, that it would consider the parking issue in the context of any adverse impact from the granting of the requested variance relief.

2. The site is located on the north side of K Street between 25th and 26th Streets, N.W. and is known as premises 2521-2523 K Street. It is in an R-5-D District.

3. The site is irregularly shaped with street frontage of fifty-four feet, and consists of approximately 4,800 square feet of land area. It is improved with two vacant two-story row structures that are individually designated landmarks pursuant to D.C. Law 2-144. The building located at 2521 K Street was constructed in approximately 1843. The building at 2523 K Street has been traced to 1868.

4. The site is located between two existing apartment buildings. The rear portion of the site abuts a twenty foot wide public alley. The buildings on the site are in a deteriorated condition and have been vacant since September 1, 1983.

5. The applicant proposes to retain and rehabilitate the two townhouses on the site and to integrate the townhouses into the design of a new apartment building at the rear of the site. With the proposed addition, the new structure on the site will consist of twenty-three apartment units offering a mix of one bedroom, two bedroom plus den and three bedroom units.

6. The plans were reviewed by the Historic Preservation Review Board ("HPRB") pursuant to D.C. Law 2-144. On June 20, 1987, the HPRB gave conceptual approval of the proposed design.

7. The Board finds that the applicant is seeking area variance relief under Section 3107.2. Pursuant to Section 3107.2 of the Zoning Regulations, the applicant is now seeking variances from the rear yard requirements (Section 404.1), the lot occupancy requirement (Section 403.2), the court requirements (Section 406.1) and the nonconforming structure provisions (Section 2001.3) to construct an addition at the rear of the site. The applicable standard is a demonstration of practical difficulties to or

exceptional and undue hardship upon the applicant. The use of the site is not an issue in this application.

8. Pursuant to Sub-section 404.1 of the Zoning Regulations, a 21.25 foot rear yard is required and none is provided requiring a 100 percent variance. Sub-section 403.2 allows a maximum lot occupancy of 75 percent or 3,600 square feet and 4,482.69 square feet of coverage is provided requiring a variance of 882.69 square feet or 24.52 percent. Sub-section 406.1 requires a minimum width of open court of ten feet and 7.58 feet is provided requiring a variance of 2.42 feet or 24.2 percent. The required minimum width of the closed court is fifteen feet and fourteen feet is provided requiring a one foot variance of 6.66 percent. The required minimum area of the closed court is 350 square feet and 196 square feet is provided requiring a variance of 154 square feet or 44 percent.

9. The requested variances are needed to implement the recommendations of HPRB. HPRB has reviewed the plans on two occasions and has granted conceptual design approval to the project. In its first meeting, on May 17, 1987, HPRB commented that the new addition should not encroach on the existing townhouse structures and recommended that all new construction be pushed back into the site. After revising the plans, the architect appeared before HPRB on June 20, 1987. At that time, HPRB granted conceptual design approval to the project.

10. On December 21, 1983, a demolition contractor filed an application for a demolition permit. The permit ultimately was not issued, because a landmark designation application had been filed for the subject buildings. HPRB held a hearing on the designation application on October 17, 1984 and issued a decision granting landmark status to the buildings on November 12, 1984. Thereafter, the Mayor's Agent pursuant to D.C. Law 2-144 considered the owner's request to demolish the landmark buildings and denied the request on the basis that alternative economic use of the property was feasible.

11. Although the owner has appealed both the designation decision and the Mayor's Agent's decision, he is willing to resolve the controversy and to end the litigation. The present proposal is an attempt to find an adaptive reuse of the properties.

12. The historic character of the structure, and the physical constraints of the site preclude the provision of on-site parking. However, parking is available in the surrounding neighborhood.

13. The design of the building responds to the comments of HPRB, which expressed a strong interest in ensuring that new construction would not encroach on the landmark buildings. The construction has therefore been pushed back into the site to allow for visual separation and differentiation of the landmark buildings and the complete retention and exposure of the side facades. In setting the construction far back on the site however, it becomes extremely difficult to meet the seventy-five percent lot occupancy requirement of the R-5-D District. Under the proposed scheme, approximately ninety-two percent of the lot is covered. Relief from Section 403.2 is necessary to address the concerns of HPRB and to construct a building of sufficient size to render the project feasible.

14. Relief from the rear yard requirement is critical to achieve the design objectives of HPRB. Once the new construction is pushed to the rear of the existing buildings, an encroachment on the required rear yard occurs and it is a practical difficulty to comply with the rear yard requirements.

15. Because the design of the new construction follows the rear building lines of two existing nonconforming structures which differ in depth, nonconforming width of open and closed court, and area of closed court, are created. Due to the irregular building lines of the existing structures, it would be extremely difficult to limit the construction to the rear portion of the site and conform to the court requirements. Additionally, since the existing structures are nonconforming as to side yard and the addition creates a new nonconformity, variance relief from the provision of the regulations concerning additions to nonconforming structures is necessary.

16. Two alternative schemes for on-site parking were considered at the time of the preliminary design drawings. First, the possibility of providing below grade parking was investigated. Because of the serious rock condition of the property, however, it is infeasible to provide any below grade parking. The adjacent Potowmac Overlook Condominium does not have underground parking, but parking at grade. The cost of excavating the rock is not only prohibitively expensive, but the blasting of the rock on the property would pose serious damage to the existing landmark structures. Further, because of the landmark structures basement, excavation would have to occur two levels below grade. Even if excavation were assumed to be theoretically possible, the site is so small that a ramp to this level would consume all of the available space.

17. The architect also explored the possibility of providing parking at grade as did the building next door. The problem with this approach is again the difficulty of working around the existing landmark structures. Because

the applicant is required to retain these buildings in their entirety, the only place on site to provide any parking is at the rear of the property. This is completely infeasible, because of the lack of space available. Although conceivably two or three spaces might be provided, these spaces would have to be accessed by the rear alley. Once the turnaround is provided, there is no room to provide any parking spaces. The same problems occur even when attempting to provide a one-way driveway through the property entering on K Street and exiting at the alley in the rear.

18. In response to an issue raised by the community, the architect testified that although vault parking spaces would in some cases alleviate a parking situation, the problem with the subject property is the inability to access the vault space due to the location of the existing landmark structures.

19. The requested lot occupancy, court, rear yard and nonconforming structure variances, do not have any adverse impact on adjacent properties or the surrounding neighborhood. Because of the setting back of the new structure at the rear of the site, adequate light and air and open space is provided on the subject site, even more than what would be permitted under a matter-of-right development.

20. Unable to provide any parking on-site, and to avoid any possible adverse impact from the proposed development, the applicant has agreed to lease five parking spaces off-site within a 1000 foot radius of the subject property. The letters filed in the record by the applicant demonstrate the availability of parking in nearby facilities. The applicant further agreed to lease the off-site parking spaces as a condition of the issuance of the certificate of occupancy.

21. The Office of Planning by report dated July 30, 1987, and by testimony presented at the public hearing recommended the approval of the subject application. In its report, the Office of Planning noted that the siting of the proposed structure conforms to the concerns of HPRB, which in turn, have necessitated the area variances. The report noted that if the two historical structures were not located on the subject property, the applicant could have designed a different building which would not have required the needed relief. The Board concurs.

22. Advisory Neighborhood Commission (ANC) 2A filed a report dated July 22, 1987. In its report, the ANC noted its support of the preservation of the two landmark structures. The report also expressed a lack of opposition to the variances relating to lot occupancy, court and rear yard. The ANC noted however, that in light of the existing

parking conditions in the neighborhood, the lack of a provision for parking in the project was problematic.

23. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board finds that it concurs with the ANC's general support of the lot occupancy, court and rear yard variances requested. As to the ANC's concern as to the adequacy of parking, the Board finds that the applicant has demonstrated its inability to provide parking on-site and its inability to access vault space, as suggested by the ANC. The Board further finds that in requiring the leasing of off-site parking spaces it has addressed the ANC's concerns as to parking impacts.

24. John Nowick, representing the Potowmac Overlook Condominium Association, a building located immediately west of the subject building, testified at the hearing. Mr. Nowick appeared on behalf of the Association and noted general support of the concept of retention of the landmark buildings. He also noted a lack of objection to the variances requested. He questioned however, the applicant's ability to qualify for a waiver from the parking requirement and urged the Board to require parking for the site.

25. The Board acknowledges the concerns of the Potowmac Overlook Condominium Association and other organizations and persons who submitted letters to the record. The Board finds that the applicant has met its burden of proof with respect to the area variances that are before the Board. These area variances were not opposed by any organization or person. As to the parking issue, as set forth in Finding of Fact No. 20, the applicant has agreed to lease five parking spaces off-site as a condition of the issuance of its certificate of occupancy. The Board finds that the provision of those off-street parking spaces addresses the parking concerns of the opposition.

26. The applicant requested flexibility to modify its plans to respond to the recommendations made during the course of final approval by the Historic Preservation Review Board. The Board finds the applicant's request to be reasonable and appropriate.

#### CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires the showing of an exceptional extraordinary condition, inherent in the property itself, which creates a practical difficulty upon the owner. The Board concludes that the applicant has met its burden of proof. The practical difficulty is inherent in the site. The existing two

landmark structures render development on the site extremely difficult. In complying with the recommendations of the Historic Preservation Review Board, all new construction has been placed at the rear portion of the site so that it does not encroach on the existing structures. As a result, the rear yard and lot occupancy requirements are affected. Further, because the new construction follows the rear lot line of the existing buildings, a nonconforming court is created. Finally, because the existing structures are nonconforming as to side yard, and because the design recommendations made by the Review Board create new nonconformities of structure, relief from the nonconforming structure provisions of the regulations is required.

The Board concludes it has accorded the issues and concerns of the ANC the "great weight" to which it is entitled. The Board further concludes that the requested relief can be granted, as hereinafter conditioned, without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The applicant shall provide five off-street parking spaces, within 1,000 feet of the site, for the use of the tenants of the subject building. The spaces so provided shall not be spaces which are required or counted for any building or structure to comply with the provisions of 11 DCMR, Chapter 21.
2. The certificate of occupancy shall be issued only for that period of time for which the applicant demonstrates that it has effected the provision of the off-site parking spaces required by Condition No. 1 of this approval.

VOTE: 4-0 (Lindsley Williams, Paula L. Jewell, Carrie L. Thornhill, and William F. McIntosh to grant; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: AUG 24 1987  
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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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